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Attorneys for Intervenor
The Commission of the European Communities

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re
Application Of
MICROSOFT CORPORATION
Applicant.

) Case No. 06-80038 JF (PVT)
)
) **NOTICE OF MOTION AND MOTION OF
THE COMMISSION OF THE EUROPEAN
COMMUNITIES TO INTERVENE;
MEMORANDUM OF POINTS AND
AUTHORITIES; [PROPOSED] ORDER**
)
) Date: To Be Set
) Time: To Be Set
) Place: Courtroom 3, 5th Floor
)
) The Hon. Jeremy D. Fogel
)

NOTICE OF MOTION AND MOTION TO INTERVENE

PLEASE TAKE NOTICE THAT at a date and time to be set by the Court, before the Honorable Jeremy D. Fogel, in Courtroom 3 of the United States District Court for the Northern District of California, The Commission of the European Communities will and hereby does move this Court pursuant to Federal Rule of Civil Procedure 24 to intervene in the above-captioned proceeding for purposes of submitting a Memorandum in Opposition to Microsoft Corporation's Objections to Magistrate's Order and participating in these proceedings.

This motion is based on this Notice of Motion and Motion and the accompanying Memorandum, and such other authorities and argument as may be submitted in any reply at or before the hearing.

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

In support of this Motion, the Commission states that it has an interest in the subpoenas (as modified by the parties) which are the subject of this action because the subpoenas seek documents exchanged among Oracle Corporation, Sun Microsystems, Inc., the Commission and third parties relating to Microsoft's compliance or alleged failure to comply with its obligations under Articles 5(a) and (2) of the Commission's 2004 Decision concerning Microsoft. The Commission's view on the discovery at issue is directly relevant (*see Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004)). The Commission believes that the subpoenas constitute an effort to circumvent the Commission's procedures and proof-gathering rules.

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1 Disposition of this matter without the benefit of the Commission's views would impair the
2 Commission's ability to protect its interests.

3 Dated: April 17, 2006

4 Respectfully submitted,
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8 WILMER CUTLER PICKERING
9 HALE AND DORR LLP
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11 By _____/s/
12 Elizabeth I. Rogers
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14 Attorneys for Intervenor, the Commission of the
15 European Communities
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29 Of the Commission of the
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32 Per Hellstrom
33 Member of the Legal Service
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35 European Communities
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1 **[PROPOSED] ORDER**

2 The Court hereby GRANTS the motion of The Commission of the European Communities to
3 intervene in the above-captioned proceeding.

4 IT IS SO ORDERED.

5 Dated: _____, 2006

7 _____
8 Jeremy D. Fogel
9 United States District Judge

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